

California Trout and Matilija Coalition.txt

From: Nica Knite [nknite@caltrout.org]
Sent: Sunday, April 25, 2010 10:40 PM
To: Wade, Douglas J HQ02
Subject: COE-2010-0007 - Comment Letter
Attachments: image001.jpg; image002.gif; image003.jpg

Categories: Red Category

United States Army corps of Engineers

Attn: CEWC-CE, Douglas J. Wade

441 G Street NW

Washington, DC 20314-1000

Re: COE-2010-0007: Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls.

Dear Mr. Wade,

California Trout and the Matilija Coalition provide the following comments in opposition to the proposed Docket Number COE-2010-0007: Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls (VP). At the heart of our opposition is the importance of a coordinated approach to levee maintenance for the support of both public safety improvements and the protection of our nation's precious remaining rivers and streams and their wildlife habitats and fisheries, a balance which the proposed process fails to achieve.

Public Safety as a Recognized Necessity

California Trout and the Matilija Coalition fully recognize the need to protect and maintain public safety. However, the notion that these proposed rules will enhance public safety is predicated on the idea that the protection of the natural values of vegetation on levees directly conflicts with public safety. There is not adequate research on the relationship of vegetation and levee stability to support a vegetation management change of this scale. In fact, Corps' regulations 33 CFR, Part 208 recognize that vegetation can improve public safety by reducing the potential for levee erosion - "Where practicable, measures shall be taken to retard bank erosion by planting of willows or other suitable growth on areas riverward of the levees." Additionally, the Corps Technical Report REMR-EI-5 (Corps, Effects of Vegetation, 1991), "The Effects of Vegetation on the Structural Integrity of Sandy Levees," report concluded that "even low root concentrations as measured along selected transects in the sandy levee sufficed to make the slope more secure under 'worst case' scenario conditions."

In the wake of an event such as levee failures during Hurricane Katrina,

2005, we recognize that evaluation, response, and change is often needed to prevent future such tragedies. However, in the July 31, 2006 report, "New Orleans Levee Systems Hurricane Katrina" the Independent Levee Investigation Team did not support a finding of poor performance of levees due to the presence of woody vegetation.

Tree growth, especially on the lower portions of the levees in the native banks or waterside slope, often has beneficial effects (Shields, Gray 1992; Corps, Effects of Vegetation, 1991), including the stabilization of levee materials, the reduction of erosive forces and the slowing of higher flows, which in turn encourages the deposition of sediments. These factors do not undermine, but rather enhance public safety. The proposed vegetation policy will likely result in devastating environmental impacts by removing vast areas of mitigation vegetation deemed critical for the support of fish and wildlife. Additionally, the removal of said vegetation will eliminate the vegetation's potential public safety enhancement values.

Environmental Impacts and Environmental Law

The removal of significant amounts of vegetation from levees would result in the loss of critical riparian corridor habitat upon which many of our listed endangered, threatened, and sensitive species depend. Such effects could result in cumulative losses, most notably the potential loss of vegetation that was planted as mitigation for earlier projects. Additionally, preserving our habitats is an important component for protecting food web dynamics and providing necessary shading. These foreseeable and potentially cumulatively significant environmental impacts must be considered before the proposed vegetation policy may be approved. Given the potential scope of impact, an Environmental Impact Statement in accordance with the National Environmental Policy Act (NEPA) must be prepared.

Additionally, the proposed management of existing variances specifies blanket invalidation for all existing levee variances unless a new variance is sought by levee sponsors/operators by 30 September 2010, less than 5 ½ months from now. In order to submit for a new variance, levee sponsors/operators are responsible to comply with NEPA and Endangered Species Act (ESA) requirements, for which the documentation alone will take more than the allowed time. Additionally, under Corps requirements, the variance requester must disclose the extent of the root systems of species at maturity proposed to be found on or near the levee. Yet the Corps has been hoping to launch a research program to understand the species and conditions of root systems near and within levees because the Corps has established that such information is essentially as of now unavailable. Therefore, the establishment of the proposed variance process will in essence create a de facto policy which will largely eliminate vegetation variances and lead to wholesale riparian clear-cutting, much of which will include the destruction of mitigation habitats.

In the landmark study "SOS: California's Native Fish in Crisis," habitat degradation/destruction is identified as one of the most significant factors threatening our native fish across the state. Of the 32 native salmonids in the state, 1 is already extinct, 13 are listed under endangered species laws, and 20 overall may be extinct within this century if protection and restoration efforts are not made a priority. Given the loss of the majority

our river and streamside habitats, the preservation of the remaining riparian corridors is essential for our fisheries survival.

Environmental impacts of this scale and magnitude cannot be deemed as having "Finding of No Significant Impact." This is a clear violation of the intent and letter of environmental protection law.

Effective Policy Decisions

The Corps has stated that their proposed policy has been "peer reviewed," but the Corps' actions seem to fail to recognize that the peer review resulted in significant concerns about the proposed actions and found a significant lack of supporting research. [See "Revised Final Independent Peer Review for U.S. Army Corps of Engineers Vegetation Policy for Local Flood Damage Reduction Systems" (Battelle Peer Review, 2008)]

For many years the Corps has participated in the California Levees Roundtable (CLR) working in an informed stakeholder process to examine and address issues which include those associated with the proposed vegetation variance process. Apparently understanding the need for more information and research, the Corps' Engineer Research and Development Center (ERDC) was engaged in collaborative research efforts with the CLR California Levee Vegetation Research Program (CLVRP) to specifically examine these issues. Despite this seemingly reasonable approach, the Corps' proposed policy changes without the benefit of these research results, and outside of the purview of these existing collaborative relationships.

Given the complexity of the problem, the variable nature of situations across the country to which this policy would be applied, and the widely accepted understanding that levee vegetation enhances rather than threatens public safety, it is poor policy making to move forward with the proposed process. Additionally, with extensive research underway, and a broad spectrum of qualified, interested stakeholders (CLR members are but a few of these) engaged in examination of the issues at hand, a return to a collaborative approach should be made.

Summary

The proposed VP does not effectively address public safety enhancement needs because vegetation has not been found to cause levee failure, and in fact in some cases it is believed that it enhances public safety. The proposed VP violates environmental law by first failing to provide an EIS as required under NEPA to consider the cumulative effects created by this policy change, and secondly by issuing timetables for permitting existing variance levees that will make mandated environmental review impossible and result in a wholesale clearcutting of countless riparian corridors, including mitigation vegetation. Moreover, the proposed VP flies in the face of good policy and

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decision making in that the Corps has ignored the findings of peer review research findings, abandon the effective stakeholder processes that were developed, and dismissed its own determinations regarding vegetation on levees and the need for more research and further understanding of the issues and circumstances at hand in order to effectively address the policy needs.

In addition to those cited herein, California Trout and the Matilija Coalition have extensive additional concerns. However, our comments here are, by necessity brief, and set out to express the nature and depth of our opposition to the proposed VP. Therefore, we respectfully request that the Corps withdraw and through more sensible, collaborative processes, redraft the proposed VP.

Questions regarding this letter may be addressed to Nica K. Knite at 619-6-269-9207 or nknite@caltrout.org

Sincerely,

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